

INFORMATION TO OUT-OF-STATE BROKERS

This memorandum is designed to outline Kentucky real estate brokerage law, particularly as it pertains to commercial brokerage. Kentucky is a so-called “turf” state. This means that anyone who is brokering real estate in this state by representing a buyer or lessee or by representing a seller or lessor in a transaction involving real property located in Kentucky must possess a valid Kentucky real estate license.

“Real estate brokerage” is defined in KRS 324.010(1) as a “single, multiple, or continuing act of dealing in timeshares or options, selling or offering for sale, buying or offering to buy, negotiating the purchase, sale or exchange of real estate, engaging in property management, leasing or offering for lease, renting or offering for rent, or referring or offering to refer for the purpose of securing prospects, any real estate or the improvements thereon for others for a fee, compensation or other valuable consideration.”

If an out-of-state broker represents a client who wishes to pursue a piece of real property in this state, there is an exception to the brokerage law that allows an out-of-state broker or corporation licensed in another state to refer that client to a Kentucky-licensed real estate broker and receive a referral fee. Then, the Kentucky broker must handle all aspects of the transaction from that point on. Examples of activities that must be performed by the Kentucky broker include, but are not limited to, the showing of the property, the drafting of any lease or purchase agreements, the negotiating of any lease or purchase agreements, the drafting of any Requests for Proposals, and the contacting of property owners or other brokers on behalf of that client. It is not enough for an out-of-state broker to simply refer the client and then continue to perform the licensed activity in this state.

Unlicensed brokerage is a crime in this state. KRS 324.990 carries very stiff penalties for this activity, including a fine not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00), imprisonment for a term not to exceed six (6) months, or both. Perhaps more importantly, this statute allows for the disgorgement of any fees or commissions paid as a result of the unlicensed brokerage activity. This is an enforcement path that the Commission has pursued in the past. Each transaction is considered a separate offense and is punished as such.